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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/828,905

04/21/2004

Richard Kunkel

42526-2800

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21611

7590

09/12/2006

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EXAMINER

FETSUGA, ROBERT M

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/828,905	Applicant(s) KUNKEL, RICHARD	
	Examiner Robert M. Fetsuga	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04/21/04 & 08/08/06 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. The drawings are objected to because the leader for reference numeral "36" is missing in Fig. 5.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the subject matter set forth in claim 6 (Fig. 5) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the

applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The disclosure is objected to because of the following informalities: Paragraph 0017, lines 7 and 11, "30" apparently should be -45--; paragraph 0020, line 6, "47" apparently should be -49--; and paragraph 0021, lines 1 and 4, "30" apparently should be -45--.

Appropriate correction is required.

3. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is unclear as to whether it is a "Jepsum" type claim since the preamble begins "In a ...", but the body does not include the transition "the improvement ...". See 37 CFR 1.175(e). Furthermore, claims 2-8 refer back to a "waterfall structure" rather than the "spa" recited in claim 1.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koren, Lesikar and applicant's admitted prior art.

The Koren reference (Fig. 2) discloses a spa (col. 1 lns. 5-8) comprising: a circulating system (col. 2 lns. 37-39); a top rim (of 24); and a waterfall including a channel 16 having a floor 56 and walls 50,51, an access aperture 18, a lens 42, and a chamber 34. The term "portable" in claim 1 does not appear to define any structure of the disclosed spa over the spa taught by Koren. Alternatively, applicant's admitted prior art (apa) discloses at paragraph 0002, lines 4-5, that portable spas are

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known to include waterfalls. Therefore, Koren teaches all claimed elements except for the waterfall being embedded in the spa rim.

Although the waterfall of the Koren spa is not embedded, as claimed, attention is directed to the Lesikar reference which discloses an analogous spa (col. 1 ln. 11) which further includes a waterfall 16 embedded in a rim 39. Therefore, in consideration of Lesikar, it would have been obvious to one of ordinary skill in the spa art to embed the waterfall associated with the Koren spa in order to recess it below the top rim.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Koren, Lesikar and apa as applied to claim 2 above, and further in view of Lowry et al.

Although the channel of the Koren waterfall does not include a rib, as claimed, attention is directed to the Lowry et al. (Lowry) reference which discloses an analogous waterfall 16 which further includes a channel 63 having a rib 64. Therefore, in consideration of Lowry, it would have been obvious to one of ordinary skill in the waterfall art to associate a rib with the Koren channel in order to facilitate water flow.

7. Claims 4 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koren, Lesikar, apa and Lowry as applied to claim 3 above, and further in view of Gaffney et al.

Re claim 4, although the channel of the Koren waterfall does not include a disruptor button, as claimed, attention is directed to the Gaffney et al. (Gaffney) reference which discloses an analogous waterfall which further includes a channel 47 having a disruptor button 59. Therefore, in consideration of Gaffney, it would have been obvious to one of ordinary skill in the waterfall art to associate a disruptor button with the Koren channel in order to facilitate water flow.

Re claim 6, although the parts of the Koren waterfall are not plastic, as claimed, attention is again directed to Gaffney which discloses plastic parts (col. 2 lns. 48-50). Therefore, in further consideration of Gaffney, it would have been obvious to one of ordinary skill in the waterfall art to associate plastic with the Koren parts in order to facilitate molding.

Re claim 8, the Koren lens is considered to "conform" to the channel floor.

8. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

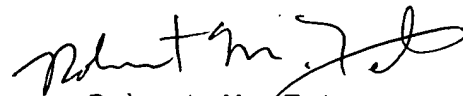
9. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

10. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.



Robert M. Fetsuga
Primary Examiner
Art Unit 3751